

## SPECIAL COUNCIL MEETING

JANUARY 4, 2013

The Special Meeting of the Council of the County of Kaua'i, was called to order by Council Chair Jay Furfaro at the Council Chambers, 4396 Rice Street, Suite 201, Lihu'e, Kaua'i, on Friday, January 4, 2013 at 2:06 p.m., after which the following members answered the call of the roll:

Honorable Tim Bynum  
Honorable Gary L. Hooser  
Honorable Ross Kagawa (*excused*)  
Honorable Nadine K. Nakamura (*present 2:08 p.m.*)  
Honorable Mel Rapozo  
Honorable JoAnn A. Yukimura  
Honorable Jay Furfaro

### APPROVAL OF AGENDA.

Mr. Rapozo moved for approval of the agenda as circulated, seconded by Mr. Bynum, and unanimously carried.

### COMMUNICATION:

C 2013-20 Communication (12/11/2012) from Councilmember Rapozo, requesting the presence of the County Engineer, to provide an update and report regarding the recent delay in construction of the Multi-Use Path along Papaloa Road, including the circumstances causing the delay, the corrective measures taken, and the costs associated with the delay and the corrective measures undertaken to correct any deficiencies. This briefing should also include the current timeline for completion of this portion of the Multi-Use Path.

Chair Furfaro: It is my intent to go into Executive Session on this item at a later time, before we convene back into the public item. I would like to recess this Council Meeting for the time being. Is everyone fine with that? Thank you.

There being no objections, the Council recessed at 2:08 p.m.

The Council reconvened at 3:22 p.m., and proceeded as follows:

Mr. Rapozo was noted excused.

Chair Furfaro: As explained earlier, it is my intent to handle this communication by first having an Executive Session with the County Attorney then coming back out for testifiers. If there is anyone here that would like to give any testimony because they cannot stay, I am going to give you time to speak on this subject matter now, but we will not have any Q&A back because we still need to be briefed by the County Attorney. Is there anyone in the audience that would like to speak on this communication? Mr. Rosa and others, if you wish to give us testimony, I will take testimony from you now, but again, because we are going into a consultation on a contract, we will limit any response from us until we go through the briefing. You will wait? Okay. May I have the County Attorney up?

GLENN MICKENS:

Jay, about how long is the briefing?

Chair Furfaro:  
half an hour.

I would hope it is a reasonable briefing of a

There being no objections, the rules were suspended.

MONA W. CLARK, Deputy County Attorney: This is for Executive Session 589.

EXECUTIVE SESSION:

ES-589 Pursuant to Hawai'i Revised Statutes Sections 92-4, 92-5(a)(4) and (6), and Kaua'i County Charter Section 3.07(E), on behalf of the Council, the Office of the County Attorney requests an executive session to allow the Council to consult with the County Attorney regarding C 2013-20 Communication (12/11/2012) from Councilmember Rapozo, requesting a briefing regarding the recent delay in construction of the Multi-Use Path along Papaloa Road, including the circumstances causing the delay, the corrective measures taken, and the costs associated with the delay and the corrective measures undertaken to correct any deficiencies, and a current timeline for completion as it relates to this portion of the Multi-Use Path, and the status of negotiations to resolve pending issues, and related matters. This briefing and consultation involves the consideration of the powers, duties, privileges, immunities and/or liabilities of the Council and the County as they relate to this agenda item.

Chair Furfaro: Members, I am looking for a motion and a second for us to go into Executive Session regarding the contract issues that need to be resolved and other issues reviewed by the County Attorney.

Ms. Nakamura moved to convene in executive session for ES-589, seconded by Ms. Yukimura, and carried by the following vote:

FOR CONVENING IN EXECUTIVE SESSION:	Bynum, Hooser, Nakamura, Yukimura, Furfaro	TOTAL – 5,
AGAINST CONVENING IN EXECUTIVE SESSION:	None	TOTAL – 0,
EXCUSED & NOT VOTING:	Kagawa, Rapozo	TOTAL – 2,
RECUSED & NOT VOTING:	None	TOTAL – 0.

There being no objections, the Council recessed at 3:28 p.m.

The Council reconvened at 3:51 p.m., and proceeded as follows:

Chair Furfaro: We are back for the public portion of C 2013-20, is there anyone that would like to give us any testimony at this time?

Mr. Mickens: Thank you, Jay. All I know about this Papaloa Road – I remember the last time we were here talking about it, there was a lot of confusion and some wrong number given to the Council. It was like a hundred and twenty-eight thousand dollars (\$128,000.00) to buy that piece of property and move, etc., on it. Then the actual figures came out and it was more like four

hundred thirty-five thousand dollars (\$435,000.00). The point I am trying to make is... what keeps on changing with this now... in my estimation, I am no contractor or anything but my estimation... if the County gave the contractor the plans for doing the segment of the sidewalk and it is too low or something, if the contractor abided by those plans then it sounds like it is the County's problem. If on the other hand, the contractor did not do the plans according to what the County gave them the plans for, then it will have to be the contractor but... I do not know, it sounds like there keeps on being road block after road block. The public had to raise red flags, stop something from being done like along the boardwalk – along the beach. That was the statement, I guess, some of the public raised enough red flags and stopped it from being a boardwalk on the beach, otherwise the path would have been in the ocean, right Tim? At this stage of the game, anyway... I got pictures showing where it would have been and it is gone.

Mr. Bynum: The portion on the south end would have been disturbed by recent erosion.

Mr. Mickens: But the point was the path was going to be there and it was up to the public to raise red flags. I would think the County would have engineers or designers that made this thing that would have the foresight and say, "let us stay away from the coast," and just increments of being able to once in a while happen... if it happens and it washes the thing away then why not go to the alternate thing. I know what you keep on saying, Tim, with all these EA's and everything and I am still confused about the EA on this thing whether it can be done on the segmented part of the path or not. You heard testimony today that that is illegal, you cannot do it anymore and I guess in Honolulu for that train. For that twenty (20) mile section, they cannot do it on segments it has to be done on the whole path. Whether it is true or not, I do not know. I just hope some management in this total thing can be seen whether it has to be with Ernie or something doing a an audit on the thing to see which direction we are going to go or something, I do not know but I hope that we do not just keep on spinning our wheels. For me, as I said it a hundred times, it seems like we are trying to retrofit something in an area that is already hard to put something into. That path would have gone into the wilderness or Bette Midler's land out there mauka... I thought it had a good chance of surviving. That would have been a good place.

JOE ROSA: Good afternoon. A lot of this problem from what I see from the start, there was no actual plans that was set and... where you can look at it and say, "this is it." When I worked as an inspector, we had plans that had everything. We had plans with topographical detail for the highway, utilities, for everything. Now, I can see what happened on Papaloa Road. They took aerial photos probably and go ahead and rip up the road and do whatever they do and there are utilities under there. Probably sewer, electrical, tv, you name it... in the construction, you have to know what is under, not only on top. People got

electrocuted because they do not know there are power lines under there. This thing has all been in a rush and not totally planned, like the way it should be. With DOT and I am going to use it as an example that I see is slacking with the construction and I think it should be SOP when it comes to construction. You need plans with every detail. They talk about those slabs. I heard Doug Haigh say about this and that but nobody know what they look like. So, do their work completely. Like over there, that is what they encountered. They did not realize that they were going to encounter all kinds of problems, so, do your homework and do it right. Get topographical locations of not what is on the ground there but what is under there, under the ground that cannot be seen because you can cause a lot of trouble. I do not know what was the hurry if they had money, only Kaua'i seemed to have looked at it and took advantage of it and it is not something that is a win-win, it is costing all our taxpayers money. I look for progress but this is something that was not planned. That is why we encounter all these concerns. If the contractor did not finish the contract when he is supposed to have done it by October like I read in the paper, is he paying a fine? If you do not finish your contract, the clock starts running on your penalty. Is the contractor paying any penalty for not finishing their job on time or is it because of the County failure to do the (inaudible)? Those are things that they all are doing in a hurry. I hear a member of your Council saying that they did all this, they did all that but where is the proof? I can tell you that I have read seven (7) pages or seven (7) books but where is the proof? The proof does not lie and the truth does not lie. Do the work and do it right like as I say, do not rush it. I cannot see why they cannot just leave that phase there alone until DOT do the new highway because a lot of you people do not know what the existing Wailua Bridge is, it is infested with (inaudible). One of these days, that bridge might just sink. That is why Līhu'e Plantation had called only twenty-seven (27) tons on that bridge. Why do you not work with DOT and find out how soon can you make a new highway? Then you can use that whole highway there, close it off from that bridge and make it a walkway in the whole area there. Thank you.

Chair Furfaro:

Thank you, Joe, for your testimony.

WALDENE PALMEIRA: My comments are without prejudice under the UCC 1-308 code. Basically to begin with, again, I would just like to state, I forgot to state the last time, I object to this agreement on all levels with this project. This project includes the previous communication of the Wailua Path. One thing about this portion here at Papaloa... it says Papaloa but it is actually on Wailua Beach, is that there is a NPDES permit for the Kūhiō Highway "Short Term Improvement Project" which is right here, its graded drainage inlet one (1) which is, I believe, right there at Papaloa where if you pass there today, you have all of those drainage construction drains waiting to be placed in. I do not believe that that is for the bike path in isolation, I believe that is also for the Kūhiō Highway short term improvement project. My point is as mentioned earlier about the segmentation of these two (2) projects, whereas, we are against this Kūhiō Highway short term

project/bike path because the drainage points on this NPDES permit goes into Wailua Bay, it also goes into the Coco Palms Fishpond and other places whereas this was not covered in an EIS. Again, culturally inappropriate placement of drainage into the historic fishpond. This is a type of destructive and you can call it warfare, if you want to, and that is not going to continue as a type of desecration which cannot continue. My second point is that for the Section 4(f), there had to be an owner and Mr. Donald Fujimoto and Mel Nishihara signed this for the problematic Section 4(f) in December 7, 2005 in which... that the County of Kaua'i is not the owner of Wailua Beach. They have a certain jurisdiction but they are not the owners. That is one (1) point and then we were in discussion with the Advisory Council Historic Preservation, basically she informed the County and State that there really needed to be an owners approval for Section 4(f). The State of Hawai'i person answered that they are not the owner of the Coco Palms area and so forth. Basically, that is the point of contention still outstanding. One last thing is that on the date of... there was a DLNR meeting held in January 8, 2010 in which Doug Haigh and Lenny Rapozo were there in which they were trying to have the access for this specific area of Papaloa because it was actually a portion of the Coco Palms property, so DLNR had to give that approval. Just for the record, I wanted to present a copy which was given then, it is called "the writ of Covenant and Constructive Notice to Cease and Desist" and Mr. Liko Martin was there to present it at that day along... the person who presented it was Kahuhipa Kawananaokoa who is the heir apparent of the Hawaiian Monarchy. Kahuhipa Kawananaokoa present... I guess it was not January, it was April 8, 2010 and I just wanted to present a copy because it is a public record of DLNR but a copy was never given to the County. Thank you very much. So, basically again my main point was that this drainage inlet one (1), if you go into the south parking lot since they have made changes there, a lot of damage has been done because of the type of sand, taking out the original sand and putting in this fake sand. If you go in there now, you need a four-wheel drive, the cement does not go in well, so it is just a mess. At that point also, they had sort of a clearance, the SMA did not go back to public testimony for that SMA change that was made on February 12, 2010 which was from Donald Fujimoto, County Engineer, via Doug Haigh... actually from Ian Costa, request for review of construction plan revisions for the cane haul bridge and the Lydgate Park Path and basically they had made changes amongst themselves but these types of changes usually need to go back through the SMA process which is a public process. These changes resulted in damage to the south parking lot. I just wanted to point out that that the SMA process was not done correctly because these major changes were supposed to go back through the public process, instead they do a lot of in-house changes. Again, my purpose here is not to tell you what to do, it is a major responsibility, what you have to do, and it is... I am not sure if it is your responsibility; however, you are receiving the information and I appreciate you receiving it. My purpose here is just to provide some information and to let you know that our group, myself and Hui Namakaiwa O Wailua Nui (inaudible) are in total absolute disagreement on all levels.

Chair Furfaro: Staff, could you get a copy and I will transmit it to the County Attorney because the SMA process goes through Planning, but we will see that the correspondence is delivered to the County Attorney.

Ms. Palmeira: Okay, well it was just given orally.

Chair Furfaro: Do you want to give us the testimony and we will make a copy?

Ms. Palmeira: Yes, I think I am going to give you a few documents here, if you want to take that and then I will be submitting something within six (6) days.

Chair Furfaro: Okay, very good. We will make copies and we will get it to the County Attorney's Office. Thank you. Is there anyone else in the audience that wishes to speak on this item?

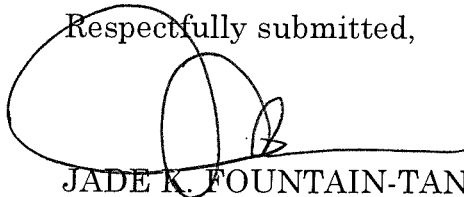
There being no objections, the meeting was called back to order, and proceeded as follows:

Mr. Bynum moved to receive C 2013-20 for the record, seconded by Ms. Yukimura and unanimously carried.

ADJOURNMENT.

There being no further business, the meeting was adjourned at 4:07 p.m.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jade K. Fountain-Tanigawa", written over a horizontal line.

JADE K. FOUNTAIN-TANIGAWA  
Deputy County Clerk

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